

# Book review I. Czeguhn, Die kastilische Höchstgerichtsbarkeit 1250-1520 (Berlijn, 2002)

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I. CZEGUHN, Die kastilische Höchstgerichtsbarkeit 1250-1520. [Schriften zur Europäischen Rechts- und Verfassungsgeschichte, 40]. Duncker & Humblot, Berlin [2002], 238 p.

Today a considerable amount of attention is being given to the supreme courts of justice of the *ancien régime*. During the last few decades, studies have been published on the German Imperial Chamber, the Scottish Court of Session and the Dutch *Hoge Raad*, to mention just a few examples. It is likely that as a result of the progress that has been made in the exploration of the rich history of the supreme courts of the various European territories, a comprehensive comparative study on this subject can be expected in the near future. No doubt, the study under discussion here, focussing on the early history of the Spanish supreme courts, more specifically on the royal supreme court in Castile in the period 1250-1520, will figure prominently in the bibliography of such a study. This is also anticipated by its author, who states: '[D]ie Arbeit [soll] im Rahmen der Geschichte der europäischen Höchstgerichtsbarkeit vergleichende Betrachtungen ermöglichen und so auch einem weiteren Forschungsgegenstand dienen' (p. 17).

The book consists of two main parts. The first part deals with the historical development of the Castilian supreme court in the period 1250-1520. 1250 is chosen as the point of departure since the second half of the 13th century witnessed major innovations in the organization of the Castilian judicial system. 1520 is the *terminus ad quem*, since the Spanish judicial system entered a very new phase in its development in 1520 under Charles I and the revolt of the municipalities ('Kommunen'). The second part is devoted to the judicial organisation in Castile at the time of the so-called Catholic Kings (Isabella and Ferdinand), a period which, until the publication of Czeguhn's book, had not been studied in depth from a legal-historical point of view.

The first part starts with the reign of Alfonso X (1252-1284). In this period the reception of Roman Law formed an impetus for the creation of a number of royal judicial offices, many of which are discussed in depth by the learned author in order to explain the development of the later supreme court. These offices are related to particular types of cases.

Two main types came before the royal courts: cases which were brought at first instance, the so-called *casos de corte*, and second instance cases brought before the royal courts by way of appeal or supplication. The *casos de corte* and the appeal cases were decided by judges known as *alcades del rey* (also known as *alcades de corte* or *iudices curiae*), whereas the cases started by way of supplication were originally decided by the King himself assisted by an *alcade del rey* known as *Juez de las Suplicaciones*. Additionally, the royal judicial system included specialised tribunals, e.g. a special court for the nobility where the *alcaldes de los Hijosdalgo* administered justice.

The judicial organisation that originated during the reign of Alfonso X, was strengthened and further developed by Alfonso XI. During his reign (1312-1350), the royal administration and the royal judiciary were clearly separated. As regards the royal judiciary, specific hearings known as *Audiencias públicas* were held for the presentation of supplications to the King himself. When the King could not be present at these *Audiencias*, he left the decision of the cases to judges (*oidores*) acting in his name. In the middle of the 14<sup>th</sup> century this resulted in a situation where the King was usually absent and would attend only when cases of specific importance were being heard. The King then was delegating judicial powers to his judges.

Whether these *Audiencias* can be considered to be the ancestor of the *Audiencia* that was officially founded in 1371 in an *Ordenamiento* drafted by an assembly of the estates in Toro is not clear. What is clear, however, is that the latter *Audiencia* had already existed for some time before its official creation. In 1371, the idea was that the *Audiencia* would be an appeals tribunal dispensing justice in a summary fashion. However, it soon started to adjudicate in an ordinary manner. As a result, it became the supreme appellate court in Castile. Its 7 judges, who acted in the King's name and were designated as *oidores*, were learned professionals, something which was necessary because of the growing importance of Roman Law. Next to these *oidores*, the *alcades del rey* continued to exercise an appellate jurisdiction in cases of lesser importance.

Shortly after 1371 there was a concern that the *Audiencia* became too powerful a court. Originally conceived as an extraordinary tribunal dealing with specific cases brought to its attention by way of supplication, it started to develop into a supreme appellate court. In order to counter this development, the King established his *Consejo Real* as a court in 1385, and it started to hear cases in 1387. Beginning in 1389 the *Consejo* decided cases that were originally submitted to the *Audiencia* by way of supplication. *Audiencia* and *Consejo* became the focal point of political strife, with the former court and its professional judges being favoured by the towns, whereas the *Consejo* was the favourite of the nobility. The *Audiencia* lost many of its cases to the *Consejo*. However, in due time this situation changed, and as a result the *Audiencia* regained its old prominent position. In 1432 its status as the ordinary appellate tribunal in civil cases was undisputed. Additionally, it succeeded in extending its jurisdiction and power, since it developed a first instance jurisdiction as regards *casos de corte*. Consequently, the *alcades del rey* lost their jurisdiction in this respect; from 1432 they only had jurisdiction to hear criminal matters.

The *Audiencia* was part of a collectivity of judicial bodies designated as *Chancilleria*. We also find designations such as *Corte y Chancilleria* or *Audiencia y Chancilleria*. It flourished during the reign of the Catholic Kings Isabella and Ferdinand, which is discussed in the second part of Czeghun's study. This period witnessed the end of the *Reconquista* and the bringing of most of the Spanish peninsula under the dominion of Isabella and Ferdinand. Major reforms were made in the organisation of the Valladolid-based *Chancilleria*. An important reform occurred in 1489, when the *Audiencia* became fully integrated into the *Chancilleria* as its leading body. At the same time, officials were appointed to supervise the royal supreme court: the *multador* who soon was superseded by the *veedor*. The latter took part in the deliberations of the judges (*oidores*), supervised their observance of the laws, and supported the president of the *Audiencia*. Additionally, from 1492 on, there were frequent visitations of the *Chancilleria*. Another important development was that the territories acquired as a result of the *Reconquista* were provided with their own *Chancelleries*.

The final conclusion of Dr. Czeghun is that during the period studied Castile witnessed the modernisation of the royal judiciary: although it was not separated from the Crown, it became a body that was more or less independent from the individual Kings. The reign of the Catholic Kings was especially important for this development.

The present book forms an in-depth study of a topic in Spanish legal history that for a long time has received little attention. In it, Dr. Czeghun, in a clear and convincing manner, discusses the rise of a more modern judiciary in the territories belonging to the Castilian Crown. His study is an important contribution to our knowledge of the development of the

supreme royal court as an institution in medieval Europe. Additionally and apart from the scholarly merits of the present book, the fact that it is written in German makes it a valuable tool for those scholars who do not read Spanish. The fact that the author includes translations of important documents from Spanish in German enhances its qualities even more. The Appendix, for example, contains the translation of the important ordinance of 24 March 1489 on the organisation of the *Chancilleria* in Valladolid. This ordinance remained in force until the dissolution of the *Chancilleria* in 1834. Additionally, Dr. Czeghun's study contains useful tables listing the Kings of Castile in the period under consideration as well as tables setting out in a schematic fashion, judicial organisation, the jurisdiction of the royal courts and the prevailing means of recourse in Castile.

Maastricht, C.H. van Rhee